IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.694 OF 2006

Shri Sadashiv Laxman Kurade,)
Age:54 Yrs., Occ:Agriculture,)
R/at.Ankalkhop, Taluka Palus,)
District Sangli.) ...Petitioner

Versus

1. Shri Ramchandra Maruti Kurade)
Age: 53 Yrs.,Occ:Agriculture,)

2. Shri Nivrutti Maruti Kurade,)
Age: 41 Yrs.,Occ:Agriculture,)

3. Shri Vasant Laxman Kurade,)
Age: 40 Yrs.,Occ:Agriculture,)

All R/at Ankalkhop, Taluka Palus)
District Sangli.) ...Respondents

Shri M.S.Lagu for the Petitioner.

Shri A.B.Vagyani for the Respondent No.1.

CORAM : ABHAY S. OKA, J.

DATE : FEBRUARY 06, 2007.

JUDGMENT:

1. Heard Advocate for the Petitioner and Advocate for the first Respondent. Other two Respondents are served. Taken up for hearing forthwith. The Petitioner had filed an Appeal before the District Court. The said Appeal was dismissed for default on 18th December, 2003. The Petitioner applied for

re-admission of the Appeal before the District Court. There was a delay of 142 days in filing that Application. By the impugned Judgment and Order dated 26th August, 2005, the said Application has been rejected.

2. The learned Advocate for the Petitioner has invited my attention to the averments made in the Application and submitted that the default was on the part of the Advocate engaged by the Petitioner. The learned Advocate for the first Respondent submitted that there is a gross and unexplained delay of 142 days on the part of the Petitioner and therefore, the learned Additional District Judge was justified in rejecting the said Application.

3. I have considered the submissions. The Appeal preferred by the Petitioner has been dismissed for default. The delay is in filing an Application for re-admission of the Appeal. It is well settled position of law that while dealing with an Application under section 5 of the Limitation Act, 1963, the court has to adopt a liberal and justice oriented approach.

4. The averments made in the Application made by

the Petitioner disclose that on the date on which Appeal was fixed for hearing, the Advocate appointed by the Petitioner was out of station. On the next day i.e. on 19th December, 2003 the Advocate appointed by the Petitioner did not return. After the decision of the Appeal, the Petitioner obtained certified copy of the order passed in Appeal on 02nd April, 2004. The certified copy was collected by another Advocate on behalf of the Petitioner who met with an accident and had to take bed-rest for one month. Therefore, the Petitioner could not get certified copy of the order from him.

5. At the time of hearing of the Appeal, the presence of the Petitioner was not necessary as he had engaged services of an Advocate. The Appeal was dismissed for default only because the Petitioner's Advocate was not present. In view of averments made in the Application for condonation of delay, sufficient cause was made out for condonation of delay. A case is made out for condonation of delay and for restoration of the Appeal. In my view, the learned Additional District Judge has adopted hyper-technical approach. The impugned order deserves to be quashed and set aside. However, the first Respondent

will have to be compensated by ordering payment of costs.

6. Hence, I pass the following order:

(i) The impugned Judgment and Order dated 26th August, 2005 is quashed and set aside. Civil Misc. Application No.118 of 2004 deserves to be allowed in terms of prayer clauses (a) and (b) thereof and Regular Civil Appeal No.310 of 1999 is restored to the file subject to condition of the Petitioner paying costs of Rs.3,500/- to the first Respondent within a period of six weeks from today. Deposit of costs with the Appellate Court within stipulated time will be treated as sufficient compliance.

(ii) If the amount of costs is paid by the Petitioner within stipulated time, the District Court will decide the Appeal on its own merits as expeditiously as possible and preferably on or before 30th September, 2007.

JUDGE